

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBIN WADE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

CASE NO. 2:15-CV-01540-DWC

ORDER ON PLAINTIFF'S
COMPLAINT

Plaintiff filed this action, pursuant to 42 U.S.C § 405(g), seeking judicial review of the denial of Plaintiff's application for Supplemental Security Income ("SSI") benefits. The parties have consented to proceed before a United States Magistrate Judge. *See* 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13. *See also* Consent to Proceed before a United States Magistrate Judge, Dkt. 6.

After reviewing the record, the Court concludes the Administrative Law Judge ("ALJ") erred by failing to properly evaluate the opinions of one of Plaintiff's examining psychologists and one of Plaintiff's treating physicians. Therefore, this matter is reversed and remanded, pursuant to sentence four of 42 U.S.C. § 405(g), for further proceedings.

PROCEDURAL& FACTUAL HISTORY

On September 7, 2012, Plaintiff filed an application for SSI. *See* Dkt. 11, Administrative Record (“AR”) 162-172. Plaintiff alleges she became disabled on June 30, 2010, due to fibromyalgia, depression, COPD, and emphysema. *See* AR 162, 186. Plaintiff’s application was denied upon initial administrative review and on reconsideration. *See* AR 82, 92. A hearing was held before ALJ Virginia M. Robinson on January 14, 2014, at which Plaintiff, represented by counsel, appeared and testified. *See* AR 34.

On May 19, 2014, the ALJ found Plaintiff was not disabled within the meaning of Section 1614(a)(3)(A) of the Social Security Act. AR 27. Plaintiff’s request for review of the ALJ’s decision was denied by the Appeals Council on August 18, 2015, making that decision the final decision of the Commissioner of Social Security (the “Commissioner”). *See* AR 1, 20 C.F.R. § 404.981, § 416.1481. On July 14, 2015, Plaintiff filed a complaint in this Court seeking judicial review of the Commissioner’s final decision.

Plaintiff argues the denial of benefits should be reversed and remanded for further proceedings, because the ALJ failed to properly evaluate the medical opinions of one of Plaintiff’s treating physicians, Dr. Steve Lewis, M.D., and one of Plaintiff’s examining psychologists, Dr. Christopher Portman, Ph.D. Dkt. 16, p. 1.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits only if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (*citing Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). “Substantial evidence” is more than a scintilla, less than a preponderance, and is such ““relevant evidence as a reasonable

mind might accept as adequate to support a conclusion.” *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989) (quoting *Davis v. Heckler*, 868 F.2d 323, 325-26 (9th Cir. 1989)).

DISCUSSION

I. Whether the ALJ Properly Evaluated the Medical Opinion Evidence.

A. Standard

The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of either a treating or examining physician or psychologist. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988); *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)). However, “[i]n order to discount the opinion of an examining physician in favor of the opinion of a nonexamining medical advisor, the ALJ must set forth specific, *legitimate* reasons that are supported by substantial evidence in the record.” *Nguyen v. Chater*, 100 F.3d 1462, 1466 (9th Cir. 1996) (citing *Lester*, 81 F.3d at 831). The ALJ can accomplish this by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). In addition, the ALJ must explain why the ALJ’s own interpretations, rather than those of the doctors, are correct. *Reddick*, 157 F.3d at 725 (citing *Embrey*, 849 F.2d at 421-22). The ALJ “may not reject ‘significant probative evidence’ without explanation.” *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (quoting *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984) (quoting *Cotter v. Harris*, 642 F.2d 700, 706-07 (3d Cir. 1981))). The “ALJ’s written decision must state reasons for disregarding [such] evidence.” *Flores*, 49 F.3d at 571.

B. Application of Standard

1. Christopher Portman, Ph.D.

Dr. Portman performed a psychological evaluation of Plaintiff on April 16, 2013. AR 431. During the examination, Plaintiff reported symptoms of panic and depression. AR 428-29. Plaintiff also reported a fear of being in cars, sporadic eating, and insomnia, as well as the fact she does not go out or drive. AR 428. On mental status examination, Dr. Portman documented shabby appearance and grooming, sad and somewhat anxious mood, and tearful affect with reasonable eye contact. AR 431. Dr. Portman found Plaintiff's remote memory was compromised as Plaintiff could only recall two of four words after five minutes, and found Plaintiff had difficulty concentrating as Plaintiff struggled with serial sevens and was only able to spell "world" backwards at a very slow pace. AR 431. Dr. Portman also found Plaintiff had an incomplete fund of knowledge, was unable to interpret adages, and had impaired insight and judgment. AR 431. However, Dr. Portman also found Plaintiff's perception, thought process and content, and orientation were within normal limits. AR 431.

Dr. Portman diagnosed Plaintiff with Post-Traumatic Stress Disorder ("PTSD") with anxiety problems including panic with agoraphobia. AR 429. As a result of Plaintiff's impairments, Dr. Portman opined Plaintiff would be severely limited in her ability to: understand, remember, and persist in tasks by following detailed instructions; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision; and complete a normal workday and work week without interruptions from psychologically based symptoms. AR 430. Dr. Portman also opined Plaintiff had marked limitations in nine other areas, including her ability to: understand, remember, and persist in tasks by following very short and simple instructions; learn new tasks; perform routine

1 tasks without special supervision; adapt to changes in a routine work setting; make simple work-
 2 related decisions; ask simple questions or request assistance; communicate and perform
 3 effectively in a work setting; maintain appropriate behavior in a work setting; and set realistic
 4 goals and plan independently. AR 430.

5 The ALJ gave Dr. Portman's opinion little weight for the following four reasons:

6 [1] Dr. Portman's opinion is based primarily on the claimant's self-report of
 7 symptoms. However, the claimant's reports of symptoms are not consistent with
 8 the severity opined by Dr. Portman. [2] The claimant has not sought treatment,
 and [3] this examination was done specifically for the purpose of obtaining
 benefits. [4] Dr. Portman's opinion is not based on objective testing.

9 AR 21 (numbering added). Plaintiff argues these were not specific and legitimate reasons,
 10 supported by substantial evidence, for rejecting Dr. Portman's opinion. The Court agrees.

11 As a threshold matter, the Court notes the ALJ's reasons for giving little weight to Dr.
 12 Portman's opinions are bare, conclusory statements offered entirely without support in the
 13 record. In order to reject the opinion of a treating or examining physician, an ALJ must do more
 14 than state his or her conclusions; he or she must set forth their own interpretations and explain
 15 why they, rather than the doctors' are correct. *Reddick*, 157 F.3d at 725 (*citing Embrey*, 849 F.2d
 16 at 421-22). *See Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). The ALJ's failure to do
 17 so here was error. *See, e.g., McAllister v. Sullivan*, 888 F.2d 599, 602-03 (9th Cir. 1989) (finding
 18 similar reasoning for rejecting a treating physician's opinion was "broad and vague, failing to
 19 specify why the ALJ felt the treating physician's opinion was flawed").

20 Moreover, the reasons offered by the ALJ for rejecting Dr. Portman's opinion are all
 21 legally erroneous or unsupported by substantial evidence. First, the ALJ found Dr. Portman's
 22 opinion was based primarily on the claimant's self report of symptoms. An "ALJ may reject a
 23 treating physician's opinion if it is based 'to a large extent' on a claimant's self-reports that have
 24

1 | been properly discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
2 | 2008). However, “when an opinion is not more heavily based on a patient’s self-reports than on
3 | clinical observations, there is no evidentiary basis for rejecting the opinion.” *Ghanim v. Colvin*,
4 | 763 F.3d 1154, 1162 (9th Cir. 2014). Here, Dr. Portman did more than rely on Plaintiff’s self-
5 | reports; in fact, Dr. Portman conducted a clinical interview and mental status examination where
6 | he documented deficits across a range of areas, including remote memory, fund of knowledge,
7 | concentration, capacity for abstract thought, and diminished insight and judgment. AR 431. As
8 | discussed more fully below, these components of Dr. Portman’s examination are objective
9 | testing and are independent of Plaintiff’s subjective self-reports. Thus, the ALJ’s finding Dr.
10 | Portman’s opinion is based primarily on the claimant’s self reports is unsupported by substantial
11 | evidence in the record as a whole.¹

12 | Second, the ALJ’s finding the “claimant has not sought treatment” for her mental
13 | disorders is unsupported by substantial evidence in the record. In fact, the record reflects
14 | Plaintiff routinely sought counseling through the offices of her primary care physician, Dr.
15 | Lewis. AR 471, 473, 513. Dr. Lewis’ records also reflect Plaintiff exhibited paranoia and distrust
16 | in her counselors. AR 471, 495. Dr. Lewis also managed Plaintiff’s medication for her mental
17 | health issues, and documented adverse reaction to several drugs. *See* AR 473, 477, 495. In light
18 | of these records clearly indicating Plaintiff sought treatment for her mental health disorders (and
19 | in some cases, that her treatment was inhibited or interrupted as a result of these disorders), the
20 | ALJ’s finding Plaintiff did not seek mental health treatment is unsupported by substantial
21 | evidence.

22 |
23 | ¹ The ALJ goes on to state Dr. Portman’s opined limitations are more severe than
24 | Plaintiff’s self-reports would suggest. However, as Dr Portman based his opinion on more than
Plaintiff’s self-reports, the Court need not address this issue.

1 Third, the ALJ erred by rejecting Dr. Portman's opinion because his examination was
 2 conducted "for the purpose of obtaining benefits." AR 21. "The purpose for which medical
 3 reports are obtained does not provide a legitimate basis for rejecting them. An examining
 4 doctor's findings are entitled to no less weight when the examination is procured by the claimant
 5 than when it is obtained by the Commissioner." *Lester*, 81 F.3d at 832. Absent some evidence of
 6 "actual improprieties" in Dr. Portman's evaluation—which the ALJ does not cite, nor can the
 7 Court find—it is error for an ALJ to reject an examining physician or psychologist's opinion
 8 simply because the opinion was rendered in the context of an evaluation for some form of
 9 disability benefits. *Id.* (quoting *Ratto v. Secretary*, 839 F.Supp. 1416, 1426 (D. Or. 1993).

10 Fourth, the ALJ's finding Dr. Portman's opinion was not based on objective testing
 11 misunderstands the nature of Dr. Portman's mental status examinations and his clinical
 12 observations. As this Court has previously noted:

13 [E]xperienced clinicians attend to detail and subtlety in behavior, such as the
 14 affect accompanying thought or ideas, the significance of gesture or mannerism,
 15 and the unspoken message of conversation. The Mental Status Examination
 16 [MSE] allows the organization, completion and communication of these
 17 observations. . . . Like the physical examination, the mental status examination is
 18 termed the *objective* portion of the patient evaluation."

19 *Blessing v. Astrue*, 2013 WL 316153, at *6 (W.D. Wash. 2013) (quoting Paula T. Trzepacz and
 20 Robert W. Baker, *The Psychiatric Mental Status Examination*, 3-4 (Oxford University Press
 21 1993). "Anyone can have a conversation with a patient, but appropriate knowledge, vocabulary,
 22 and skills can elevate the clinician's 'conversation' to a 'mental status examination.'" Trzepacz
 23 and Baker, at 3. The ALJ's finding Dr. Portman's examination was not based on objective testing
 24 disregards the objective components of Dr. Portman's evaluation; thus, the ALJ's finding on this
 point was unsupported by substantial evidence.

1 Because the ALJ did not provide specific and legitimate reasons for giving little weight to
 2 Dr. Portman's opinion, the ALJ erred by giving Dr. Portman's opinion little weight.

3 *2. Steve Lewis, M.D.*

4 Plaintiff's treating physician, Dr. Lewis, has treated Plaintiff for a variety of physical and
 5 mental health conditions since 2008, including depression, bipolar disorder, insomnia, GERD,
 6 abdominal pain, and chronic pain. AR 473, 479 513, 515, 530, 568. On January 21, 2014, Dr.
 7 Lewis completed two residual functional capacity assessments of Plaintiff: one pertaining to her
 8 mental residual functional capacity and one pertaining to her physical residual functional
 9 capacity. AR 470-561, 569, 573.

10 In terms of mental limitations, Dr. Lewis opined Plaintiff would have extreme limitations
 11 (defined as a "major limitation" with "no useful ability to function") in her ability to: maintain
 12 attention and concentration for extended periods and to complete a normal workday and
 13 workweek without interruptions from psychologically based symptoms, and; perform at a
 14 consistent pace without an unreasonable number and length of rest periods. AR 567-68. Dr.
 15 Lewis also opined Plaintiff would have marked limitations in ten areas, including her ability to:
 16 understand, remember, and carry out detailed instructions; perform activities within a schedule,
 17 maintain regular attendance, and be punctual within customary tolerances; the ability to work in
 18 coordination or proximity to others without being distracted by them; interact appropriately with
 19 the general public, and; respond appropriately to changes in the work setting. AR 567-68. Dr.
 20 Lewis based his opinion on Plaintiff's longitudinal treatment history, as well as clinical and
 21 psychological findings. AR 568, 573. Dr. Lewis also noted he based his opinion of Plaintiff's
 22 mental impairments, in part, on "her response or lack of response to treatment" and "her limited
 23 coping abilities." AR 568. Dr. Lewis also found objective support for Plaintiff's complaints of
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1 pain in her reduced range of motion, tenderness to palpitation, and a May 14, 2012 MRI of her
2 spine which revealed “bulging discs.” AR 571.

3 In terms of physical limitations, Dr. Lewis opined Plaintiff would be unable to lift more
4 than 25lbs at a time and fewer than ten pounds on an occasional basis. AR 570. Dr. Lewis also
5 opined Plaintiff would be able to sit for no more than four hours in an eight hour workday, stand
6 or walk for no more than four hours in an eight hour workday, would have limited use of her
7 hands and arms, and would be able to bend, squat, stoop, crouch, crawl, kneel, climb, and reach
8 on no more than an occasional basis. AR 570-71. Dr. Lewis opined Plaintiff would require a
9 cane to ambulate. AR 573.

10 The ALJ gave Dr. Lewis’ mental residual functional capacity assessment little weight for
11 three reasons:

12 [1] His opinion is inconsistent with the medical evidence of record. [2] It relies
13 heavily on the claimant’s inaccurate and incomplete reports of symptoms. For
14 example, the claimant reports she is afraid to leave home; however, the claimant
reports walking three times a week. [3] Although he indicates the claimant has
failed to respond to treatment, the record does not show significant treatment.

15 AR 22 (numbering added). As for Dr. Lewis’ physical residual functional capacity assessment,
16 the ALJ found Dr. Lewis’ opinions concerning Plaintiff’s lifting restrictions to be consistent with
17 the medical evidence, but otherwise gave the opinion little weight for one reason:

18 [T]he remaining limitations are overstated. They are not consistent with the
19 claimant’s reported activities. For example, the claimant is able to use the
computer for large portion [sic] of the day, she cooks, cleans, and does laundry.

20 AR 25. Plaintiff argues these were not legally sufficient reasons to discount the opinion of a
21 treating physician, and the Court agrees. The Court will first address the ALJ’s reasons for
22 discounting Dr. Lewis’ opined mental limitations, followed by the ALJ’s reason for discounting
23 Dr. Lewis’ opined physical limitations.

1 a. Mental Limitations

2 As with Dr. Portman, several of the ALJ's reasons for discounting Dr. Lewis' mental
3 residual functional capacity assessment are couched as conclusory statements without any
4 explanation or citation to the record. *See Garrison*, 759 F.3d at 1012; *Reddick*, 157 F.3d at 725
5 (citing *Embrey*, 849 F.2d at 421-22). *See, e.g., McAllister*, 888 F.2d at 602-03. Importantly, Dr.
6 Lewis was Plaintiff's treating physician. An ALJ must give "specific reasons for the weight
7 given to the treating source's medical opinion, supported by evidence in the case record, and
8 must be *sufficiently specific* to make clear to any subsequent reviewers the weight the adjudicator
9 gave to the treating source's medical opinion and the reasons for that weight." Social Security
10 Ruling ("SSR") 96-2P, *available at* 1996 WL 374188 (emphasis added). The ALJ's unsupported,
11 conclusory statements do not satisfy this standard. *See, e.g., McAllister*, 888 F.2d at 602-03
12 (citing *Embrey*, 849 F.2d at 421).

13 Moreover, the ALJ's proffered reasons are legally insufficient and unsupported by
14 substantial evidence. First, the medical evidence of record concerning Plaintiff's mental health
15 reflects Plaintiff has, in fact, been treated by Dr. Lewis and his medical staff on at least fifteen
16 occasions over several years for her mental health issues. *See* AR 353, 355, 361, 363-64, 439,
17 449, 471, 473-74, 477, 479, 489, 491, 495-97, 500, 504, 508, 513, 515, 541, 557. Plaintiff's
18 treatment regimen included medication management and ongoing counseling. *See* AR 471, 473,
19 477, 495, 500, 513. This treatment record directly contradicts the ALJ's finding Plaintiff did not
20 receive significant treatment for her mental health issues, thus rendering the ALJ's finding
21 unsupported by substantial evidence.

22 Second, the ALJ's finding Dr. Lewis' opinion was inconsistent with the medical evidence
23 of record is also insufficiently specific and unsupported by substantial evidence. Throughout her
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1 treatment with Dr. Lewis, Plaintiff has exhibited varying degrees of psychological distress,
2 ranging from depressed mood to paranoid thoughts and an apparent suicide attempt. *See* AR 471,
3 495, 500. Dr. Lewis' opinion is also consistent with Dr. Portman's opinion, which he cited as
4 part of the basis for his opinion. AR 568. Without additional explanation from the ALJ as to
5 what, if anything, is inconsistent between Dr. Lewis' opinion and the medical record, the Court
6 cannot find this to be a specific and legitimate reason, supported by substantial evidence, for
7 discounting Dr. Lewis' opinion. *See* SSR 96-2P, *available at* 1996 WL 374188.

8 Third, the ALJ's conclusion Dr. Lewis based his opinion on Plaintiff's "inaccurate and
9 incomplete" report of symptoms is unsupported by substantial evidence. Dr. Lewis specifically
10 indicated he based his opinion on his longitudinal treatment history with Plaintiff, clinical and
11 psychological findings, Plaintiff's lack of response to mental health treatment, her limited coping
12 abilities, and Dr. Portman's evaluation report. AR 568, 573. Further, Dr. Lewis' treatment notes
13 are included in the record, and corroborate his ongoing treatment of Plaintiff's mental health
14 issues. *See* AR 470-562. *C.f. Garrison*, 759 F.3d at 1013 (noting a medical opinion based on
15 treatment notes and personal experience is "entitled to weight that an otherwise unsupported and
16 unexplained check-box form would not merit"). The ALJ does not explain his conclusion Dr.
17 Lewis' opinions were based more heavily on Plaintiff's self reports, and the record does not
18 support this conclusion. *See Ghanim*, 763 F.3d at 1162.²

20 ² The ALJ does cite to one example of an alleged inconsistency between Plaintiff's testimony and Dr.
21 Lewis' opinion. Specifically, the ALJ noted: "the claimant reports she is afraid to leave home; however,
22 the claimant reports walking three times a week." AR 22. Notably, Dr. Lewis' notes reflect Plaintiff
23 walked several times per week in August of 2012, but walked "0" times per week as of December, 2013.
24 AR 85, 315, 472. Plaintiff also testified at the hearing she didn't feel safe outside of her home. AR 46.
Even assuming these items in the record were inconsistent, there is no indication Dr. Lewis relied more
heavily on Plaintiff's self-reports and subjective statements rather than his own independent clinical
findings in formulating his opinion.

b. Physical Limitations

As to Dr. Lewis' opinion concerning Plaintiff's physical residual functional capacity, the ALJ found Plaintiff's reported activities were inconsistent with Dr. Lewis' opinion. Specifically, the ALJ found Plaintiff's ability to use a computer for a large period of time, cook, clean, and do laundry to be inconsistent with Dr. Lewis' opinion. Inconsistency between a claimant's daily activities and a medical opinion is a specific and legitimate reason to discount that opinion. *C.f.*, *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (holding inconsistency between a claimant's testimony and their activities of daily living is an acceptable basis to find a claimant not fully credible). However, "the mere fact that a plaintiff has carried on certain daily activities . . . does not in any way detract from her credibility as to her overall disability." *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (*quoting Vertigan*, 260 F.3d at 1050).

Importantly, Plaintiff's activities are, in fact, consistent with Dr. Lewis' opinion. For example, Dr. Lewis opined Plaintiff would be able to sit for no more than one hour at a time in an eight-hour workday, and could sit for up to four hours in an eight-hour workday. AR 570. Dr. Lewis also opined Plaintiff would be unable to use her hands for gross and fine repetitive movements. AR 570. This is consistent with Plaintiff's testimony concerning her computer use, as she indicated she can use her computer for no more than one-half hour to an hour, is unable to move the computer mouse due to hand cramping, and only plays one specific computer game as it only requires her to "click a button." AR 40. *See also* AR 38. As for the other activities cited by the ALJ, they are also not actually inconsistent with Dr. Lewis' opined limitations. *See* AR 194, 215 (reflecting Plaintiff is unable to cook, clean, and do laundry without assistance, and is unable to stand for very long); AR 570-71 (Dr. Lewis' opinion Plaintiff can stand for no more than one hour at a time and more than four hours in an eight hour period, and is only able to

1 occasionally bend, squat, stoop, crouch, crawl, kneel, and reach). Therefore, the Court concludes
2 the ALJ's finding Plaintiff's activities of daily living were inconsistent with Dr. Lewis' opinion
3 is unsupported by substantial evidence.

4 Because the ALJ failed to provide specific and legitimate reasons for discounting Dr.
5 Lewis' opinion on both the mental and physical limitations, the ALJ erred by giving Dr. Lewis'
6 opinion little weight.

7 CONCLUSION

8 Based on the foregoing reasons, the Court finds the ALJ erred by failing to properly
9 evaluate Dr. Portman and Dr. Lewis' opinions. Therefore, the Court orders this matter be
10 reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g). On remand, the ALJ
11 should reevaluate the medical opinion evidence, re-evaluate Plaintiff's residual functional
12 capacity, and proceed on to Step Four and/or Step Five of the sequential evaluation as
13 appropriate. The ALJ should also develop the record as needed. Judgment should be for Plaintiff
14 and the case should be closed.

15 Dated this __ day of [Pick the date].
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18 David W. Christel
19 United States Magistrate Judge
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